

# ARKANSAS SUPREME COURT

No. CR 06-791

NOT DESIGNATED FOR PUBLICATION

FRANK MICHAEL JOHNSON  
Appellant

v.

STATE OF ARKANSAS  
Appellee

Opinion Delivered February 15, 2007

*PRO SE* APPEAL FROM THE CIRCUIT  
COURT OF FAULKNER COUNTY, CR  
2002-1402, HON. CHARLES EDWARD  
CLAWSON, JR., JUDGE

APPEAL DISMISSED.

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## PER CURIAM

A jury found appellant Frank Michael Johnson guilty of manufacture of a controlled substance, methamphetamine, possession of a controlled substance, methamphetamine, simultaneous possession of drugs and firearms, use of paraphernalia to manufacture methamphetamine, possession of drug paraphernalia, maintaining a drug premises in a drug-free zone, and possession of ephedrine with intent to manufacture methamphetamine. Appellant received an aggregate sentence of 300 months' imprisonment on the charges. The Arkansas Court of Appeals affirmed the judgment in an unpublished decision. *Johnson v. State*, CACR 04-1135 (Ark. App. Sept. 7, 2005). The mandate issued on September 27, 2005.

On September 26, 2005, appellant filed a *pro se* petition for postconviction relief under Ark. R. Crim. P. 37.1, which was denied by an order entered April 5, 2006. In the order, the trial court found that appellant's petition was timely and indicated that a hearing had been conducted. The trial court addressed the issues raised in appellant's petition and denied relief. Now before us is

appellant's appeal from that order.

We do not address the merits of appellant's brief and dismiss the appeal. Although the trial court found that the petition was timely, it was not, and the trial court did not have jurisdiction over the matter. A petition under Rule 37.1 must be filed *after* the mandate is issued because, once a judgment has been appealed, the trial court does not regain jurisdiction over the case until the mandate is issued. *Butler v. State*, \_\_\_ Ark. \_\_\_, \_\_\_ S.W.3d \_\_\_ (Sept. 21, 2006) (*per curiam*); *Doyle v. State*, 319 Ark. 175, 890 S.W.2d 256 (1994) (*per curiam*); *Clements v. State*, 312 Ark. 528, 851 S.W.2d 422 (1993); *Morton v. State*, 208 Ark. 492, 187 S.W.2d 335 (1945). Arkansas Rule of Criminal Procedure 37.2(a) provides, "If the conviction in the original case was appealed to the Supreme Court or Court of Appeals, then no proceedings under this rule shall be entertained by the circuit court while the appeal is pending." For this reason, it is incumbent on a postconviction petitioner to determine when the mandate was issued. *O'Brien v. State*, 339 Ark. 138, 3 S.W.3d 332 (1999) (*per curiam*).

Appellant filed his petition for postconviction relief before the appellate mandate was issued. As a result, the trial court lacked jurisdiction to consider the merits of the petition. With respect to a petition under Rule 37.1, the court must have jurisdiction before it can consider anything other than the timeliness of the petition. *Tapp v. State*, 324 Ark. 176, 920 S.W.2d 482 (1996) (*per curiam*). Because the trial court lacked jurisdiction at the time the petition was filed, the circuit court was limited to dismissing the petition, and we must therefore dismiss the appellant's appeal.

Appeal dismissed.